



**DEPARTMENT OF TRANSPORTATION**

**[4910-EX-P]**

**Federal Motor Carrier Safety Administration**

**[Docket No. FMCSA-2012-0268]**

**Hours of Service of Drivers: Trailways Companies Application for Exemption**

**AGENCY:** Federal Motor Carrier Safety Administration (FMCSA), DOT.

**ACTION:** Notice of final disposition; grant of application for exemption.

**SUMMARY:** FMCSA announces its decision to grant Adirondack Trailways, Pine Hill Trailways, New York Trailways (“Trailways”) and all other regular-route passenger carriers and their drivers an exemption from the hours-of-service (HOS) record of duty status (RODS) requirement to enter a change in duty status on the daily log for breaks in driving time of 10 minutes or less, for the limited purpose of picking up or dropping off passengers, baggage, or small express packages. FMCSA extended the request to all regular-route passenger carriers and their drivers rather than limiting it to Trailways’ drivers. The exemption will allow these drivers to perform their daily duties without having to record entries in the daily log for breaks in driving time of 10 minutes or less. Such activity will not be considered a change of duty status for the purposes of 49 CFR 395.8(c).

**DATES:** This exemption is effective from [INSERT DATE PUBLISHED IN FEDERAL REGISTER] to May 31, 2015.

**FOR FURTHER INFORMATION CONTACT:** Mr. Thomas Yager, Chief, FMCSA Driver and Carrier Operations Division; Office of Bus and Truck Standards and Operations; Telephone: 202-366-4325. E-mail: [MCPSD@dot.gov](mailto:MCPSD@dot.gov).

**SUPPLEMENTARY INFORMATION:**

## **Background**

FMCSA has authority under 49 U.S.C. 31136(e) and 31315 to grant exemptions from certain parts of the Federal Motor Carrier Safety Regulations. FMCSA must publish a notice of each exemption request in the **Federal Register** (49 CFR 381.315(a)). The Agency must provide the public an opportunity to inspect the information relevant to the application, including any safety analyses that have been conducted. The Agency must also provide an opportunity for public comment on the request.

The Agency reviews safety analyses and public comments submitted, and determines whether granting the exemption would likely achieve a level of safety equivalent to, or greater than, the level that would be achieved by the current regulation (49 CFR 381.305). The decision of the Agency must be published in the **Federal Register** (49 CFR 381.315(b)) with the reasons for denying or granting the application and, if granted, the name of the person or class of persons receiving the exemption, and the regulatory provision from which the exemption is granted. The notice must also specify the effective period and explain the terms and conditions of the exemption. The exemption may be renewed (49 CFR 381.300(b)).

## **Request for Exemption**

Trailways (Adirondack Trailways, Pine Hill Trailways, and New York Trailways) offers scheduled passenger-carrier service throughout New York State and to Montreal and Toronto. Trailways stated that its exemption application was for fixed-route carriers and their drivers who are often away from the controls of the vehicle for brief periods of time of less than 10 minutes to assist passengers or make one of several passenger pickups and drop-offs along the route.

Trailways advised that until March 2011 it and other motor carriers had been operating in accordance with a 1996 interpretation of 49 CFR 395.8(c) issued by the Federal Highway Administration (FHWA). The 1996 interpretation excluded regular-route passenger carrier CMV drivers from having to record a location entry on the driver's RODS for non-driving periods of less than 10 minutes. This guidance was not included in the compilation and re-publication of all Agency regulatory guidance on April 4, 1997 (62 FR 16370), and is no longer valid.

In March 2011, New York State officials began enforcing a literal interpretation of the rule, requiring that a change in duty status be entered on the log any time the driver leaves the operating controls of the CMV. Trailways is concerned that the violations will have a negative effect on the companies' and the drivers' Safety Management System scores, as well as schedules and passenger service because of the delays needed to make the entries.

Instead of complying with the provisions in 49 CFR 395.8(c), Trailways requested that its drivers with regularly scheduled routes be exempted from changing their duty status from "driving" to "on-duty not driving" when making stops of less than 10 minutes.

Trailways notes that the 1996 interpretation reduced the amount of total time a driver could drive in a duty period. Without the 1996 interpretation, the time drivers spend at stops to load passengers, freight, etc. would be on-duty / not driving, increasing the driving time available, but creating an additional administrative distraction every time the driver leaves the controls regardless of the reason or the limited amount of time away from the vehicle controls. Trailways further advised that its carriers provide flag

stops and that having to update the log at each such stop increases the amount of time that the motorcoach may be delaying traffic while waiting for the pick-up and/or discharge of passengers and luggage, and then waiting for the driver to update the log before continuing the route. According to Trailways, in many instances the large number of brief stops will not fit on the log if the driver makes all of the required entries.

Trailways noted that the maximum possible driving time would be reduced and that traffic congestion could be reduced if the exemption were granted. FMCSA believes this would ensure that operations under the exemption would be at least as safe as operations that comply with the requirements on change of duty status.

FMCSA sought public comment on the need to extend Trailways' request to all regular-route for-hire passenger carrier drivers. Including all regular-route for-hire passenger carrier drivers in this exemption precludes the need for other carriers to file identical exemption requests, and provides for consistent enforcement because the same provisions will be applied to all similar scenarios involving brief stops by drivers of these carriers during their regular-route operations.

A copy of Trailways' exemption application is available for review in the docket for this notice.

### **Public Comments**

On October 1, 2012, FMCSA published notice of this application, and asked for public comment (77 FR 60007). Ten comments were received to the public docket.

An anonymous submitter stated "In my opinion I don't see a reason in not granting this request." Mr. Gale C. Ellsworth, of Trailways, Fairfax, Virginia, supported the

application and stated that “the ‘exemption’ is a common industry practice that was approved and authorized in a rulemaking interpretation requested by Greyhound in 1996.” He further stated that “Greyhound supports the current request by Trailways, which became more important during 2011, when law enforcement and DOT agents began writing this practice as violations, which now affect a carrier’s system safety ratings in the FMCSA’s public record.” Mr. Russell S. Gaillard supported the application by stating, “I request that these drivers be exempted from the requirement to enter a change in duty status on the daily log for breaks in driving time of 10 minutes or less, for the limited purposes such as picking up or discharging passengers, baggage and or package express items.” Ms. Veronica Rodriguez said, “I think an exemption like this one will benefit all fixed route drivers.” Mr. William Woodsrow Gentry, Jr., commented, “I support the stand that the change of status is not correct for drivers. If they are just picking up someone and loading luggage then they should remain On Duty Status.” Additionally, Concord Coach Lines Inc., Greyhound, SMART Transportation Division, Teamsters Local 118, and United Motorcoach Association all supported Trailways’ application for the exemption. All comments are available for review in the docket for this notice.

### **FMCSA Decision**

The FMCSA has evaluated Trailways’ application for exemption and the public comments. The Agency believes that Trailways will likely achieve a level of safety that is equivalent to, or greater than, the level of safety achieved without the exemption (49 CFR 381.305(a)).

### **Terms of the Exemption**

### Period of the Exemption

The limited exemption from the HOS record of duty status requirements of 49 CFR 395.8(c) is granted for the period from 12:01 a.m. on [INSERT DATE PUBLISHED IN FEDERAL REGISTER] through 11:59 p.m. on May 31, 2015.

### Extent of the Exemption

The exemption is restricted to drivers employed by Trailways and other regular-route for-hire passenger-carrier drivers. Instead of complying with the provisions in 49 CFR 395.8(c), these drivers are exempted from changing their duty status from “driving” to “on-duty not driving” when making stops of less than 10 minutes. These drivers must comply with all other applicable provisions of the Federal Motor Carrier Safety Regulations (49 CFR parts 350-399).

### Preemption

In accordance with 49 U.S.C. 31315(d), during the period this exemption is in effect, no State shall enforce any law or regulation that conflicts with or is inconsistent with this exemption with respect to a firm or person operating under the exemption.

### Notification to FMCSA

Trailways and other regular-route for-hire passenger-carriers must notify FMCSA within 5 business days of any accident (as defined in 49 CFR 390.5), involving any of the motor carrier’s CMVs operating under the terms of this exemption. The notification must include the following information:

a.

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ate of the accident,

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|--|---|
| b.   | C |
| ity or town, and State, in which the accident occurred, or closest to the accident scene,              |   |
| c.   | D |
| river's name and driver's license number and State of issuance   |   |
| d.   | V |
| ehicle number and State license plate number,  |   |
| e.   | N |
| umber of individuals suffering physical injury,  |   |
| f.   | N |
| umber of fatalities,   |   |
| g.   | T |
| he police-reported cause of the accident,  |   |
| h.   | W |
| hether the driver was cited for violation of any traffic laws or motor carrier safety regulations, and |   |
| i.   | T |
| he driver's total driving time and total on-duty time period prior to the accident.                    |   |

Reports filed under this provision shall be e-mailed to [MCPSD@dot.gov](mailto:MCPSD@dot.gov).

### Termination

FMCSA does not believe the drivers covered by this exemption will experience any deterioration of their safety record. However, should this occur, FMCSA will take all steps necessary to protect the public interest, including revocation or restriction of the exemption. The FMCSA will immediately revoke or restrict the exemption for failure to comply with its terms and conditions.

Issued on: May 22, 2013

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Anne S. Ferro  
Administrator

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05/31/2013]**